Supreme Court, U.S.
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No. 01-231

IN THE

Supreme Court of the United States

DUSTIN DAVID SANDERS,

Petitioner,

v.

BOY SCOUTS OF AMERICA AND
TRANSATLANTIC COUNCIL UNIT 29242,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION FOR RESPONDENT TRANSATLANTIC COUNCIL UNIT 29242

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QUESTION PRESENTED

Whether the Transatlantic Council has sufficient minimum contacts with Pennsylvania such that the courts of Pennsylvania can constitutionally exercise *in personam* jurisdiction over the Transatlantic Council.

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STATEMENT OF THE CASE

At issue in this case is whether Pennsylvania courts can exercise personal jurisdiction over the Transatlantic Council ("TAC"). TAC is an unincorporated association of local churches, schools, civic and community organizations throughout Europe and Morocco which provides Boy Scouts programs to children living abroad, including the children of U.S. servicemen and women. The Boy Scouts of America ("BSA") issues a charter which authorizes TAC to conduct scouting programs in its assigned territory, but otherwise TAC is independent of the Boy Scouts of America and the Northeast Region of the Boy Scouts of America headquartered in New Jersey. TAC's scouting programs are required to conform to the same standards which apply generally to scouting programs elsewhere, but otherwise, TAC remains free to conduct its programs as it sees fit. TAC does not conduct any operations in Pennsylvania or in any other state of the United States and has never done so, or been authorized by its charter or by laws to do so.

The Petitioner, Dustin Sanders, filed an action in the Court of Common Pleas of Pennsylvania attempting, *inter alia*, to hold the Transatlantic Council liable for the actions of James Dickinson, who sexually molested the Plaintiff while acting as the scoutmaster of a boy scout troop in Gettysburg, Pennsylvania between 1992 through 1994. The underlying facts of this case, including the facts concerning TAC's structure and organization, are largely undisputed. Petitioner Sanders has argued certain legal conclusions stemming from those facts as set forth in his Petition for Writ of Certiorari as well as his various papers in the courts below. The Pennsylvania courts however drew different legal conclusions from those facts, and agreed based

upon basic, longstanding principles of constitutional law that TAC lacked sufficient minimum contacts to subject it to *in personam* jurisdiction in Pennsylvania. Throughout the appellate process Petitioner Sanders has alleged that the trial court erred in its legal conclusions, and has offered a strained interpretation of the trial court's Order by attempting to characterize the Order as creating new law with regard to corporate structure and amenability to suit in the United States generally. However, as discussed *infra*, the trial court's opinion cannot be fairly construed to create any "new legal fictions", and indeed the Court's opinion and the Superior Court's affirmance are limited to the narrow holding that TAC lacks sufficient minimum contacts to subject it to *in personam* jurisdiction in Pennsylvania.

Petitioner Sanders has gone to great lengths to attempt to attribute the Boy Scouts of America's contacts with Pennsylvania to the Transatlantic Council. However, Pennsylvania courts correctly found that such an attempt is impermissible.

A. The Transatlantic Council

As stated earlier, the Transatlantic Council is an unincorporated association of local churches, schools, civic and community organizations throughout Europe and Moraco which provide Boy Scout programs to children living abroad, among others. Approximately 200 such community organizations are members of TAC. Each local community organization obtains a charter from the Boy Scouts of America authorizing it to conduct scouting programs, selects its own volunteer scout leaders, and thereafter commences scouting programs. TAC makes available training and assistance to local community organizations which elect

to provide scouting programs and those chartered organizations in turn become members of TAC. TAC member organizations currently provide scouting programs for approximately 9,000 boys at various locations across Europe and Moraco. TAC member organizations provide scouting programs for the children of personnel living in Europe and Moraco, including children of military personnel, diplomats, teachers and businessmen. These include the children of U.S. citizens as well as foreign nationals who are serving in the U.S. Military. In addition, TAC member organizations provide scouting experiences and programs for the children of foreign nationals who attend international schools where U.S. dependents are enrolled. Children of foreign nationals residing in areas where no indigenous scouting program exists can also join scout troops organized by TAC member organizations.

B. The Boy Scouts of America

The Boy Scouts of America is a non-profit corporation organized pursuant to the laws of the United States, 36 U.S.C. § 21, *et seq.*, with its headquarters in Irving, Texas. The purpose of BSA, as stated in its charger, is "to promote, through organization, and cooperation with other agencies, the ability of boys to do things for themselves and others, to train them in scout craft, and to teach them patriotism, courage, self-reliance, and kindred virtues, using methods which are now in common use by the Boy Scouts." These goals are promoted by local councils such as TAC.

C. The Relationship between BSA and TAC

TAC is independent of the BSA and the northeast region of the Boy Scouts of America, which is BSA's northeast region headquarters in New Jersey. The relationship between

TAC and BSA is essentially contractual. BSA issues a charter which is renewed every year, which authorizes TAC to conduct scouting programs in its assigned territory. In turn, TAC commits to conduct its scouting programs in accordance with the principles and standards of the BSA. Except for the requirement that TAC's scouting programs conform to the same standards which apply generally to scouting programs elsewhere, TAC remains free to conduct its programs as it sees fit. BSA reserves the right to review changes to TAC's constitution and by laws for consistency with the BSA program. The organizers of each TAC member are responsible to recruit volunteer scout leaders. TAC makes available training, support, scouting materials, literature, products (including uniforms) and services to its members. TAC is notified of the identity of local volunteer scout leaders, but does not participate in their selection and recruitment. Instead TAC relies on local participants to select the best qualified scouters.

TAC does not conduct any operations in Pennsylvania or in any other state of the United States and has never done so or been authorized by its charter or by laws to do so. The areas served by the Transatlantic Council are: Austria, Belgium, Chec Republic, England, France, Germany, Greece, Hungary, Italy, Luxenberg, Moraco, The Netherlands, Northern Ireland, Portugal, Poland, Scotland, Spain, Turkey and the former Yugoslavia. TAC representatives have never conducted business in the Commonwealth of Pennsylvania. TAC has never qualified to do business in the Commonwealth of Pennsylvania. TAC has never contracted to perform any services in the Commonwealth of Pennsylvania. TAC has never owned property or any interest in property in the Commonwealth of Pennsylvania. In short, TAC has never conducted business in the Commonwealth of Pennsylvania.

TAC's primary office is at a U.S. military installation, and it obtains free use of certain facilities, pursuant to a Memorandum of Understanding with the government which authorizes and offers support for the conduct of scouting programs at NATO bases. In turn, the NATO Treaty, the Status of Forces Agreement, authorizes the U.S. military to provide for the conduct of morale and welfare programs, such as scouting, at its bases.

TAC operates under its own constitution and bylaws, which have been adopted and amended, from time to time, by the vote of its members. Each TAC member organization is entitled to designate a representative to participate in annual TAC meetings and vote on the election of executive board members. TAC bylaws place governance responsibility on an elected board of directors, which consists of 25 members. Board members are elected at annual meetings by the vote of the members present. Many of the board members are senior military officers assigned to duty with NATO; traditionally, the Chief of Staff of U.S. Army, Europe serves as President of TAC's executive board. However, such service is voluntary and the TAC board is free to choose its own officers. The TAC board elects the following officers annually: President, Vice Presidents, Treasurer, and Commissioner and Secretary. None of the officers and directors of TAC are chosen by BSA, and none of the officers or directors of BSA serve as officers or directors of TAC.

Pursuant to TAC's constitution and bylaws, the Board of TAC has control over and responsibility for the operations of TAC. The record does not contain any evidence of BSA involvement in or control of TAC's operations and no such control exists. The Board of TAC determines how scouting programs will be offered in Europe and Morocco.

The TAC board establishes an annual budget and thereby determines the amount of money to be spent by the organization on the various scouting programs and services it offers. TAC's activities are not funded by BSA, and it is TAC's board's responsibility to assure that sufficient monies are available to fund the council's planned operations. TAC obtains funding from many sources-none of which have any relationship to Pennsylvania. Participating scouts pay program fees to TAC; TAC receives revenue on the resale of scouting items purchased from BSA; TAC receives "nonappropriated funds" from the Morale, Welfare and Recreation Fund; and volunteers make donations Nonappropriated funds are sums generated by the Army from selling goods and providing services to soldiers-e.g., revenues from stores, clubs and recreational facilities on U.S. bases. These funds are distributed to organizations, such as TAC, which provide morale and welfare programs for soldiers and their families.

TAC pays fees to BSA to purchase services provided by BSA. The services purchased from BSA include personnel services, such as recruiting, advice and counsel on personnel issues, including compliance with discrimination laws and management of TAC's pension plans and employee benefits programs, and computer services. These services are provided from BSA's northeast region headquarters in New Jersey, or in some instances, from BSA headquarters in Texas. TAC purchases and pays BSA for scouting literature, paraphernalia, uniforms and other items which are provided from BSA's supply warehouse in North Carolina. These goods and services are provided by BSA to all local councils on the same terms on which they are made available to TAC. In all other material respects, the relationship between TAC and BSA parallels the relationships which exist between BSA and other local scouting councils, such as York-Adams County Council.

The TAC board appoints a Scout Executive, a professionally trained scouter employed and paid by TAC, who is responsible, under the constitution for the day to day operations of the council. The board appoints the Scout Executive, evaluates his performance and discharges the executive if his performance is unsatisfactory. The council president determines the Scout Executive's salary. The board delegates to the Scout Executive responsibility to control and supervise other paid professional and clerical staff employed by TAC. The Scout Executive hires other paid professional and clerical scouting staff, determines their salaries, evaluates their performance and is responsible for their discharge if such action becomes necessary. Decisions by the Scout Executive to terminate other paid professional scouters would ordinarily be discussed with the personnel department; however, current TAC Scout Executive Paul Beauregard made clear that BSA's role in staffing decisions is advisory only.

TAC has its own personnel manual. The Scout Executive prepares an annual report of TAC's activities for its board. The Scout Executive also negotiates an allocation of "nonappropriated funds" for TAC activities from European military authorities annually and negotiates for the use of European military facilities to support scouting activities-in some instances TAC agrees to reimburse the military for the use of its facilities.

In the case at bar, James Dickinson was a former volunteer scout leader at one of the local troops operating within the TAC area of responsibility. Dickinson fled Europe after being accused of child molestation in Germany and eventually resettled in Adams County and secured a teaching position in the Gettysburg Area School District. Dickinson again became a volunteer scout leader and was subsequently

tried and convicted in the Adams County Court of Common Pleas for child molestation arising out of incidents involving his students and scouts in Adams County.

Mr. Dickinson was not selected or approved as a scout leader by TAC. TAC does not maintain extensive records regarding scouts or local volunteer scout leaders, and the only record TAC has with respect to Mr. Dickinson is a single line from a computer printout which alphabetically lists him along with all other volunteer scout leaders for TAC member organizations during the year.

D. TAC has no contacts with Pennsylvania

The evidence of record which was developed by the Plaintiff on the issue of personal jurisdiction disclosed no contacts between TAC and Pennsylvania. TAC does not conduct business or offer services in the Commonwealth of Pennsylvania; it purchases no goods or services in Pennsylvania; it has no offices in Pennsylvania; it has not qualified to do business in Pennsylvania; and TAC offers no programs in Pennsylvania. In an apparent recognition that TAC has no jurisdictional contacts with Pennsylvania, Petitioner Sanders devoted its efforts in the Pennsylvania courts to constructing arguments that BSA's activities in Pennsylvania are somehow relevant to the existence of in personam jurisdiction over TAC.

In short, the only issue properly before this Court is whether Pennsylvania can constitutionally exercise *in personam* jurisdiction over TAC. The Pennsylvania courts applied basic, longstanding principles of constitutional law in determining that Pennsylvania may not exercise such jurisdiction. Petitioner Sanders' arguments in his Petition

for Writ of Certiorari are in large part an attempt to construe the trial court's opinion such that it creates bold and sweeping changes to the landscape of corporate and jurisdictional law. Nothing, however, could be further from the truth. The trial court's thorough and scholarly opinion simply draws the conclusion compelled by the record before it-namely that TAC lacks sufficient minimum contacts which would subject it to *in personam* jurisdiction in the courts of Pennsylvania.

REASONS FOR DENYING THE WRIT

I. THERE ARE NO COMPELLING REASONS TO GRANT THE WRIT OF CERTIORARI.

The considerations governing review of certiorari are set forth in United States Supreme Court Rule 10. Rule 10 sets for the character of the reasons which the Court will consider, including:

(a) conflicting decisions of the United States Court of Appeals;

(b) the state court of last resort has decided an important federal question in a way which conflicts with another state court of last resort or a United States court of appeals; and

(c) a state court of appeals has decided an important federal question that has not been but should be settled by the United States Supreme Court, or has decided an important federal question in a way which conflicts with relevant decisions of the United States Supreme Court.

None of these reasons, or any other compelling reasons, are present in this case which would warrant granting the

Petitioners Writ of Certiorari. Rather, despite the Petitioner's averments to the contrary, the Petitioner is merely asserting that the Pennsylvania courts have erred in their conclusion that TAC is not subject to *in personam* jurisdiction in Pennsylvania.

The trial court correctly stated that the propriety of the exercise of personal jurisdiction must be tested against both the Pennsylvania Long Arm Statute, 42 Pa. C.S.A. § 5322, and the due process clause of the Fourteenth Amendment. *Hall-Woolford Tank Co. v. R.F. Kilns, Inc.*, __ Pa. Super. __, 698 A.2d 80, 82 (1997). Because the due process requirement was not satisfied, the trial court did not discuss the state Long Arm Statute requirements. *Opinion and Order of the Court of Common Pleas of Adams County, Pennsylvania*, Appendix B to Writ of Certiorari, p. 13a.

In order to satisfy the due process requirements of the constitution, there must be sufficient "minimum contacts" between an out of state defendant and the forum state such that the assertion of personal jurisdiction does not offend "traditional notions of fair play and substantial justice". *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). In order to establish sufficient "minimum contacts" the Defendant must be able to reasonably anticipate being haled into Court in the forum state. *Id.* 471 U.S. at 474. In analyzing whether a defendant should reasonably anticipate being haled into court in the forum state, it is critical to determine that the defendant purposely directed its activities at residents of the forum and purposely availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. *Id.* 471 U.S. at 474. Random, fortuitous and attenuated contacts cannot reasonably notify a party that it may be called

to defend itself in a foreign forum and, thus, cannot support the exercise of personal jurisdiction. *Burger King*, *supra*; *Worldwide Volkswagon Corp. v. Woodsen*, 444 U.S. 286 (1985).

The law as set forth in *Burger King* and its progeny is well settled and nothing in the trial court's Opinion and Order conflicts with these well established principles of constitutional law. Accordingly, there are no compelling reasons to grant the Writ of Certiorari. Indeed, the "compelling reasons" put forth by the Petitioner for granting the Writ are all based on mischaracterizations of the trial court's Opinion and Order as discussed below.

II. THE WRIT OF CERTIORARI MISCHARACTERIZES THE HOLDING OF THE PENNSYLVANIA COURTS.

The Writ of Certiorari makes numerous assertions that the Pennsylvania courts have created "unprecedented and dangerous interpretations of federal corporate law" *Petition for Writ of Certiorari* at 15, by creating a "new and previously unannounced legal fiction — the unincorporated corporation". *Petition for Writ of Certiorari* at 17. The Petitioner also claims that

> the lower court squarely held that as a matter of federal corporate law a federal corporation can by charter create an unincorporated association that has a purpose and attributes identical to a federal corporation, but which has a legal existence unencumbered by the "sue and be sued within the jurisdiction of the United States" provision of congress' original creating statute.

Petition for Writ of Certiorari at 18.

These assertions are, quite simply, ridiculous. The Petitioner's fanciful interpretation of the trial court's Opinion has absolutely no basis. The trial court did not "squarely hold" that a federal corporation can by charter create an unincorporated association which is immune from suit anywhere in the United States. Rather, a fair reading of the trial court's Opinion confirms that the trial court simply examined TAC's contacts with Pennsylvania, and found that the contacts which the Petitioner alleged were present between TAC and Pennsylvania were "exactly the type of fortuitous and random contacts that the United States Supreme Court has ruled cannot be considered as evidence that the Defendant purposely availed itself to the forum's privileges and benefits such that it should be subject to the forum state's laws and regulations". *Opinion and Order of the Court of Common Pleas of Adams County, Pennsylvania*, Appendix B to the Writ of Certiorari, p. 15a.

Further, although the Petitioner's argument on this point is somewhat incomprehensible, the Petitioner appears to inappropriately allege bad faith on the part of both the Boy Scouts of America and the Pennsylvania courts themselves. The Petitioner states

> the Boy Scouts of America have set up defensive legal machinery ensuring that the lower court's Opinion will be immediately and effectively used wherever scouting exists . . . it is clear that the Boy Scouts of America are prepared to use this position in defense of any scout injury connected with their federally funded overseas operations and only their legal department in Texas know how many times they have succeeded.

Petition for Writ of Certiorari at 22 through 23. The Petitioner has stated in connection with the Pennsylvania courts, "as this

case shows, there is much intentional legal maneuvering and confusion about federal corporate law in the lower courts and that important question needs to be clarified." *Petition for Writ of Certiorari* at 24.

There is absolutely no justification in the record to assert that the lower courts have intentionally "maneuvered" to confuse the state of federal corporate law[1], or that TAC has in any way acted improperly by asserting its constitutional rights. This argument by the Petitioner seems to flow from its repeated mischaracterization of the relationship between the BSA and TAC as an "alter ego" relationship. In fact, the trial court held, and the Pennsylvania Superior Court affirmed, that TAC is a wholly independent and autonomous organization, distinct from the Boy Scouts of America, which does no business in Pennsylvania, and could not reasonably anticipate being haled into court in Pennsylvania. *Opinion and Order of the Court of Common Pleas of Adams County*, Appendix B to Writ of Certiorari, p. 23a. Indeed, it is TAC, and not the BSA, which has asserted that exercise of personal jurisdiction in Pennsylvania violates the Constitution.

Accordingly, the trial court's opinion in no way creates a conflict with the decisions of this Court. Quite to the contrary, if the Petitioner's relief was granted and TAC was subjected to the suit in Pennsylvania, only such a ruling would upset this Court's well-established jurisprudence regarding personal jurisdiction over out of state defendants.

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1. Indeed, this Court has recently held that BSA is not a "federal" corporation whose decisions on the qualifications of members constitute state action for federal constitutional purposes. *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).

CONCLUSION

For the reasons stated above, the only issue decided by the Pennsylvania courts, and the only issue before this Court, is whether TAC is subject to personal jurisdiction in Pennsylvania. The Pennsylvania Courts properly decided this issue in accordance with well-established principles of constitutional law. There are therefore no compelling reasons to grant the Writ of Certiorari, and the Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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